

VII. CONCLUSION

55. In summary, the rules and procedures we adopt in this Fourth Report and Order for auctioning licenses in the IVDS are designed to minimize the regulatory burdens on both applicants and the Commission, reduce the potential for delay of service to the public, and maintain safeguards to preserve the integrity of the bidding process. The rules also seek to meet Congressional objectives and serve two basic goals: promoting economic growth, and enhancing access to telecommunications service offerings for consumers, producers, and new entrants. We also take account of Congress' desire that designated entities previously underrepresented in the provision of telecommunications services be afforded preferences to encourage their participation. We expect that these procedures will lead to the development and rapid deployment of IVDS offerings across the country.

VIII. FINAL REGULATORY FLEXIBILITY ANALYSIS

56. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. § 604, the Commission's final analysis is as follows:

A. Need for, and purpose of, this action

As a result of the Budget Act referenced above, the Commission may utilize competitive bidding mechanisms in the granting of certain initial licenses. The Commission published an Initial Regulatory Flexibility Analysis, see generally 5 U.S.C. § 603, within the Notice of Proposed Rule Making in this proceeding, and published a Final Regulatory Flexibility Analysis within the Second Report and Order (at ¶¶ 299-302). As noted in that previous final analysis, this proceeding will establish a system of competitive bidding for choosing among certain applications for initial licenses, and will carry out Congressional mandates that certain designated entities be afforded an opportunity to participate in the competitive bidding process and the provision of spectrum-based services.

B. Summary of the issues raised by the public comments in response to the Initial Regulatory Flexibility Analysis

In regard to the specific IVDS issues addressed by this Fourth Report and Order, no comments were submitted in response to our Initial Regulatory Flexibility Analysis.

C. Significant alternatives considered

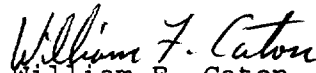
Although, as described in (B) above, no comments were received pertaining to IVDS, the Second Report and Order addressed at length the general policy considerations raised as a result of the new legislation.

IX. ORDERING CLAUSES

57. Accordingly, IT IS ORDERED that, pursuant to the authority of Sections 4(i), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), and 309(j), this Fourth Report and Order is adopted, and Parts 0, 1, and 95 of the Commission's Rules ARE AMENDED as set forth in the attached Appendix.

58. IT IS FURTHER ORDERED that the rule amendments set forth in the Appendix WILL BECOME EFFECTIVE 30 days after their publication in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION


William F. Caton
Acting Secretary

APPENDIX

Final Rule

Parts 0 and 95 of Chapter 1 of Title 47 of the Code of Federal Regulations are amended as follows:

Part 0 - Commission Organization

1. The authority citation for Part 0 continues to read as follows:

Authority: Sec. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155.

2. Section 0.131 is amended by adding new paragraph (j) to read as follows:

§ 0.131 Functions of the Bureau

* * * * *

(j) Develops, in coordination with the Office of Plans and Policy, policies for selection of licensees from mutually exclusive applicants in the Private Radio Services subject to competitive bidding; issues Public Notices announcing auctions of Private Radio Services licenses; specifies the licenses to be auctioned, the time, place and method of competitive bidding, including applicable bid submission procedures, bid withdrawal procedures, stopping rules and activity rules; specifies the filing windows for short-form applications, bidder certifications, and the deadlines for submitting filing fees, upfront payments and down payments.

Part 1 - Practice and Procedure

3. The authority citation for Part 1 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 C.F.R. 154, 303; Implement, 5 U.S.C. 552 and 21 U.S.C. 853a, unless otherwise noted.

4. Section 1.912 is amended by redesignating paragraph (e) as paragraph (f) and adding new paragraph (e) to read as follows:

§ 1.912 Where applications are to be filed.

* * * * *

(e) Applicants submitting long-form applications pursuant to competitive bidding procedures (see §1.2107(c)) must mail or otherwise deliver their application to: Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, D.C. 20554, Attention: Auction Application Processing Section.

* * * * *

5. Section 1.922 is amended by adding two entries at the beginning of the table to read as follows:

§ 1. 922 Forms to be used.

FCC Form	Title
175	Application to Participate in an FCC Auction
175-S	Supplemental Application to Participate in an FCC Auction.

* * * * *

6. In Section 1.972, paragraph (a)(1) is amended by removing the words "Part 95-Subpart F-Personal Radio Services" and paragraph (c) is amended by removing the words "or part 95-subpart F" and adding the word "or" after "part 90" in the first sentence.

Part 95 - Personal Radio Services

7. The authority citation for Part 95 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303.

8. New Section 95.816 is added to read as follows:

§ 95.816 Competitive bidding proceedings.

(a) Mutually exclusive IVDS initial applications are subject to competitive bidding.

(b) The General Procedures set forth in 47 C.F.R. Part 1, Subpart Q are applicable to competitive bidding proceedings used to select among mutually exclusive applicants for initial IVDS licenses.

(c) The specific procedures applicable to auctioning particular IVDS licenses will be set forth by Public Notice. Generally, the following competitive bidding procedures will be used to auction mutually exclusive IVDS licenses. The Commission, however, may design and test alternative procedures.

(1) Competitive bidding design. Sequential oral (oral outcry) auctions will be used to assign licenses in and around large urban areas and single-round sealed bidding will be used for rural areas unless otherwise specified by the Commission. See 47 C.F.R. §§ 1.2103 and 1.2104.

(2) Forms.

(i) Applicants must submit short-form applications (FCC Form 175) as specified in Commission Public Notices. Minor deficiencies may be corrected prior to the auction. Major modifications such as changes in ownership, failure to sign an application or failure to submit required certifications will result in the dismissal of the application. See 47 C.F.R. § 1.2105(a) and (b).

(ii) Applicants must submit a long-form application (FCC Form 574) within ten (10) business days after being notified that it is the winning bidder for a license. See 47 C.F.R. § 1.2107(c) and (d).

(3) Upfront payments. For oral outcry bidding, applicants will be required to show the Commission or its representative, immediately prior to the auction, a cashier's check for at least \$2500 in order to get a bidding number and secure a place in the room where the bidding will take place. Bidders will be required to have \$2500 upfront money for every five licenses they win. No upfront payment will be required from applicants in single round sealed bid auctions. See 47 C.F.R. § 1.2106.

(4) Down payments. Within five (5) business days after an oral outcry auction is over, or within five (5) business days after being notified that it is the high bidder in a single round sealed bid auction, a high bidder on a particular license(s) must submit to the Commission's lockbox bank such additional funds as are necessary to bring total deposits (upfront payment plus down payment) up to twenty (20) percent of the high bid(s). Small businesses eligible and electing to use installment payments pursuant to § 95.816(d)(3) are required to bring their total deposits up to ten (10) percent of their winning bid. The remainder of the twenty (20) percent down payment must be submitted within five (5) business days of the grant of their license(s). See 47 C.F.R. § 1.2107(b).

(5) Full payment. Auction winners, except for small businesses eligible for installment payments, must pay the balance of their winning bids in a lump sum within five (5) business days following the grant of their license(s). The grant of a license(s) to an auction winner(s) will be conditioned on the timely payment of all monies due the Commission. See 47 C.F.R. § 1.2109(a).

(6) Default or disqualification, see 47 C.F.R. § 1.2104(g).

(i) Sequential oral auctions. If a high bidder, after signing a bid confirmation form, fails to make the required down payment, fails to pay for a license, or is otherwise disqualified, it will be assessed a penalty equal to the difference between the its winning bid and the winning bid the next time the license is auctioned by the Commission, plus three (3) percent of the lower of these two amounts.

(ii) Single round sealed bid auctions. If a high bidder withdraws its bid prior to making the required down payment, it will be assessed a penalty equal to the difference between its bid and the next highest bid. If a high bidder, after having made the required down payment for a license, fails to pay the remaining amount for the license, or is otherwise disqualified, it will be assessed a penalty equal to the difference between its winning bid and the winning bid the next time the license is auctioned by the Commission plus three (3) percent of the lower of these two amounts.

(d) Designated entities. Designated entities are small businesses, and businesses owned by members of minority groups and/or women, as defined in 47 C.F.R. §1.2110(b).

(1) Bidding credits. A winning bidder that qualifies as a business owned by women and/or minorities may use a bidding credit of twenty five (25) percent to lower the cost of its winning bid. A bidding credit is available for a license for either frequency segment A or frequency segment B in each service area. A bidding credit, however, may be applied to only one of the two licenses available in each service area.

(2) Tax certificates. Any initial investor in a business owned by minorities and/or women and who provides "start-up" financing, which allows such business to acquire a IVDS license(s), and any investor who purchases ownership in an interest in a IVDS license owned by minorities and/or women within the first year after license issuance, which allows for the stabilization of the entity's capital base, may, upon the sale of such investment or interest, request from the Commission

a tax certificate, so long as such investor transaction does not reduce minority or female ownership or control in the entity below 50.1 percent. Any IVDS licensee who assigns or transfers control of its license to a business owned by minorities and/or women may request that the Commission issue it a tax certificate.

(3) Installment payments. Small businesses, including small businesses owned by women and/or minorities may elect to pay the full amount of their bid in installments over the term of their licenses. See 47 C.F.R. § 1.2110(d).

(e) Unjust enrichment. Any business owned by minorities and/or women that obtains a IVDS license through the benefit of tax certificates shall not assign or transfer control of its license within one year of its license grant date. If the assignee or transferee is a business owned by minorities and/or women, this paragraph shall not apply; Provided, however, that the assignee or transferee shall not assign or transfer control of the license within one year of the grant date of the assignment or transfer.

9. Section 95.819 is revised to read as follows:

§ 95.819 License transferability.

(a) IVDS system licenses acquired through competitive bidding procedures may be transferred, assigned, sold, or given away only in accordance with the provisions and procedures set forth in 47 C.F.R. § 1.2111.

(b) Except for licenses acquired through competitive bidding procedures, the licensees may not transfer, assign, sell, or give the IVDS system licenses or any component CTS licenses to any other entity until the five year construction benchmark (50 percent coverage) has been met.

(c) Once the five year construction benchmark has been met, licensees of IVDS systems that were not acquired through competitive bidding may transfer, sell, assign, or give the IVDS system licenses together with all of its component CTS licenses to any other entity in accordance with the provisions of § 95.821. If the licensee sells or gives away the apparatus the new owner must obtain a new IVDS system license and CTS licenses before placing it in operation.